

Court of Appeals, State of Michigan

ORDER

People of MI v Jason Harold Lyons

Docket No. 291447

LC No. 05-026205 FH

Stephen L. Borrello
Presiding Judge

Donald S. Owens

Alton T. Davis
Judges

On the Court's own motion, the Clerk's Office is directed to docket defendant's delayed application for leave to appeal, filed on April 8, 2009, as having been timely filed within the deadline set forth in MCR 7.205(F). *People v Means*, 480 Mich 989 (2007), *People v McCoy*, 480 Mich 989 (2007), *People of Rodgers*, 480 Mich 989 (2007), and *People v Kipfer*, 480 Mich 990 (2007).

Defendant's appellate attorney failed to understand that, under the court rules, the period for filing the application for leave to appeal started upon entry of the November 29, 2007 judgment of sentence and the application for leave to appeal had to be filed no later than December 1, 2008, 1 year after entry of the judgment of sentence. The October 7, 2008 order did not extend the time to file the application for leave to appeal as only 21 days is given after the order for the application for leave to appeal to be filed. See MCR 7.205(F)(3) and MCR 7.205(F)(4). Counsel's actions constitute ineffective assistance of appellate counsel.

Accordingly, defendant was deprived of a direct appeal of his sentencing as a result of constitutionally ineffective assistance of appellate counsel. Costs are imposed against appellate counsel John F. Gorniak(P49852) in the amount of \$250.00, to be paid to the Clerk of this Court within 21 days of the Clerk's certification of the order. This sanction is personal to the attorney and shall not be charged back to the county.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAY 29 2009

Date

Sandra Schultz Mengel
Chief Clerk